

1 through these glossaries, both the parties  
2 glossaries, and nobody picked up freeview  
3 definition. I think that's an very  
4 interesting concept.

5 Would you explain that one more  
6 time? Freeview, as I take it you're letting  
7 people use your programming without paying for  
8 it. Distributors.

9 THE WITNESS: Correct.

10 JUDGE SIPPEL: So they can get it  
11 out there to as many people because it's in  
12 your interest to get it out to as many people  
13 as they possibly can. And you describe the  
14 terms and conditions of that were. There's  
15 only how many programs a year. Eight weeks a  
16 year.

17 THE WITNESS: Four programs.

18 JUDGE SIPPEL: Four programs.

19 Eight weeks a year.

20 THE WITNESS: Correct.

21 JUDGE SIPPEL: Okay. It's all  
22 just a question of getting advertisers

1 interested in paying you for advertising time  
2 because they know you're going to go out  
3 beyond what you normally do.

4 THE WITNESS: Correct.

5 JUDGE SIPPEL: Okay. All right.

6 Thank you.

7 Are you tendering him for cross  
8 examination?

9 MS. POGORILER: Yes, Your Honor.

10 JUDGE SIPPEL: Mr. Moss, front and  
11 center.

12 CROSS EXAMINATION

13 BY MR. MOSS:

14 Q Sir, you've testified that Tennis  
15 Channel is a sports network and you therefore  
16 compete primarily with other sports networks.  
17 Correct, sir?

18 A Correct.

19 Q But Tennis Channel competes for  
20 advertising dollars other than sports  
21 networks, doesn't it, sir?

22 A Primarily the budgets that we

1 receive they come from the ad agencies. When  
2 you ask them, "What are we competing for,"  
3 they say, "You're competing for a sports  
4 budget." There are circumstances where it's  
5 not a sports budget, where it's just a general  
6 market affluent buy. But for the most part we  
7 compete for sports budgets.

8 Q Now I'm sorry. Perhaps my  
9 question wasn't clear. Does Tennis Channel or  
10 does not Tennis Channel compete with other  
11 types of networks other than sports networks  
12 for advertising dollars?

13 A I'm sorry. Our primary -- Yes.

14 Q And, for example, Tennis Channel  
15 competes with news networks for advertising  
16 dollars. Correct, sir?

17 A We try to go after to compete with  
18 news networks because we have news  
19 programming. So we target news accounts to try  
20 to get on those buys on the basis that the  
21 Tennis Channel now has news programming. So  
22 to that extent we compete with news channels.

1                   We have not received a budget from  
2                   an ad agency that said, "You are competing for  
3                   a -- We have you guys up to compete for news  
4                   budget."

5                   Q       So the answer to my question is  
6                   yes. Tennis Channel competes with news  
7                   networks for advertising dollars.

8                   A       Sure.

9                   Q       And Tennis Channel competes with  
10                  the life style networks for advertising  
11                  dollars, does it not, sir?

12                  A       There are circumstances where  
13                  Tennis Channel can get on a buy from a life  
14                  style network. Yes.

15                  Q       But your written testimony and  
16                  your testimony here earlier today doesn't  
17                  mention any of those categories. Right, Mr.  
18                  Herman?

19                  A       If you could give me a second. I  
20                  thought I did. But let me just make sure.

21                           JUDGE SIPPEL: You are referring  
22                  now to your written testimony, sir. I mean

1       that's what you're looking at right now.

2                   THE WITNESS: Yes. You're asking  
3       me about my written testimony or not?

4                   MR. MOSS: Sir, the question is  
5       withdrawn. That's fine. We can move on.

6                   JUDGE SIPPEL: At any time feel  
7       free to look at your testimony. Okay. I just  
8       wanted the record to reflect what it is you're  
9       looking at. You're fine.

10                  THE WITNESS: I just wanted to  
11       make sure I understood the question.

12                  JUDGE SIPPEL: You're fine.  
13       You've been through it. Let's go.

14                  MR. MOSS: Your Honor, may I  
15       approach?

16                  JUDGE SIPPEL: Please.

17                  MR. MOSS: I have a document  
18       that's been marked for identification as  
19       Comcast Exhibit 800.

20                               (Whereupon, the document  
21                               referred to was marked  
22                               as Comcast Exhibit No.

1 800 for identification.)

2 JUDGE SIPPEL: Thank you. It's  
3 marked as Comcast Exhibit 800, a multi-page  
4 document.

5 MR. MOSS: Your Honor, this has  
6 not been admitted into evidence.

7 JUDGE SIPPEL: Thank you.

8 BY MR. MOSS:

9 Q Mr. Herman, sir, this document  
10 came from your files. You recognize this  
11 document as an Tennis Channel advertising  
12 pitch. Right, sir?

13 A I need a second to review it  
14 please.

15 Q Sure. Take your time.

16 JUDGE SIPPEL: Take your time.  
17 Just tell Counsel when you're ready.

18 THE WITNESS: Okay.

19 JUDGE SIPPEL: I'll be saving some  
20 numbers for Mr. Carroll yet. We're up to 800  
21 already.

22 (Laughter.)

1 MR. CARROLL: I get the thousands.

2 JUDGE SIPPEL: I don't know if  
3 that's good news or not.

4 THE WITNESS: I recognize charts  
5 that are included in this presentation. I  
6 don't have a specific recollection of this  
7 compilation of charts. But I recognize the  
8 charts that are including in this document.

9 BY MR. MOSS:

10 Q But as head of advertising sales  
11 you would have overseen the preparation of  
12 these charts. Right, sir?

13 A No, not necessarily. I would have  
14 had the Research Department create the data  
15 that goes into the charts. More times than  
16 not, those charts will go past my desk but not  
17 every time. And the actual layout of the  
18 chart would have been done by a marketing  
19 person or a graphics person.

20 Q You said you recognize most of the  
21 slides in there. Is that right, sir?

22 A Yes.

1           Q     And I'd like to direct your  
2     attention to TTCCOM 70616 (phonetic).

3           JUDGE SIPPEL: Those are the Bates  
4     numbers down at the bottom. Right?

5           MR. MOSS: Yes, Your Honor.

6           JUDGE SIPPEL: Do you see where  
7     he's referring to?

8           THE WITNESS: Yes. Okay.

9           BY MR. MOSS:

10          Q     And, Mr. Herman, on this chart  
11     Tennis Channel is comparing its demographics  
12     to the demographics of Sports Nets, News Nets,  
13     Life Style Nets and Women's Nets. Is that  
14     correct?

15          A     That's correct.

16          Q     And you testified earlier that  
17     Tennis Channel compares itself to the other  
18     networks with which it competes in its  
19     advertising pitches. Right, sir?

20          A     Correct.

21          Q     And it says at the top here, "Top  
22     Sports Nets failed to deliver sponsors women.

1 Big News Nets are far too old. Men won't  
2 watch Lifestyle. Women Nets are too  
3 downscale. Only Tennis Channel tops every  
4 chart with a perfect balance of young,  
5 affluent men and women with a combination of  
6 key strengths unique in all of television."  
7 Did I read that correctly, sir?

8 A You read it correctly.

9 Q And "unique" you mean unlike any  
10 other network. Right, sir?

11 A That would be my interpretation of  
12 it. Yes.

13 Q And it's true, is it not, that Top  
14 Sports Networks failed to deliver women to  
15 sponsors?

16 A It's true that Top Sports Network  
17 don't deliver as the chart shows as many women  
18 to sponsors. It's not true that they don't  
19 deliver women.

20 Q It says right here, "Top Sports  
21 Nets failed to deliver sponsors women." Is  
22 that a true statement? It is, isn't it?

1           A       I didn't write this. But I can  
2       surmise when I go to the chart and read that  
3       the column says "Sports Net" and then "Male 79  
4       percent," "Female 21 percent." So it's a  
5       sales document. So my guess is that the  
6       language that says "Top Sports Nets failed to  
7       deliver women sponsors" is not meant to be a  
8       literal phrase when documentation is included  
9       to show exactly what the percentages are.

10          Q       But you endeavor to be accurate in  
11       your sales pitches. Right, sir?

12          A       I would want my sales pitches to  
13       be accurate.

14          Q       And the distinction that this  
15       chart is making and this language is making is  
16       that Tennis Channel can deliver women to  
17       advertisers in a way unlike other Sports Nets.  
18       Right, sir?

19          A       Correct.

20          Q       And Tennis Channel can do that  
21       because it has a higher percentage of female  
22       viewers than any other Sports Net. Right,

1       sir?

2               A       As of this writing, I would say  
3       that that's true.

4               Q       Can you identify now any sports  
5       network that has a higher percentage of female  
6       viewers than Tennis Channel?

7               A       No, but I haven't gone back to  
8       look at the data.

9               Q       So you think -- It's your  
10       testimony that you think --

11              A       I don't expect that the data will  
12       change that dramatically. But I have not gone  
13       back to do a recent analysis of that data.

14                   JUDGE SIPPEL: You already  
15       answered his question and he was into another  
16       question. So you can't proceed that way. You  
17       have to wait until he asks the question and  
18       you answer it.

19                   THE WITNESS: Okay.

20                   MR. MOSS: That's okay, Your  
21       Honor. Thank you very much for the  
22       instruction.

1 BY MR. MOSS:

2 Q Now given Tennis Channel's  
3 demographics, Mr. Herman, would it be accurate  
4 to represent that Tennis Channel's core  
5 audience is a female audience?

6 A I do not believe so.

7 Q That would not be accurate.

8 JUDGE SIPPEL: Well, maybe it  
9 would be helpful to define what you mean by  
10 core audience.

11 MR. MOSS: Your Honor, maybe an  
12 exhibit will help.

13 JUDGE SIPPEL: That's not in the  
14 glossary. What would a core audience mean to  
15 you?

16 THE WITNESS: A core audience to  
17 me would mean if you looked at a particular  
18 age and gender group that advertisers usually  
19 buy where that channel had the highest  
20 percentage of viewership and what the most  
21 valuable viewers were. So in Tennis Channel's  
22 case, we would refer to our core demographic

1 as adults 35 to 64, meaning when you look at  
 2 everybody that watches us the bulk of the  
 3 people that watch us are 35 to 64 a  
 4 combination of men and women.

5 We don't particularly do well --  
 6 We would not say our core audience are adults  
 7 18 to 34 because we don't get that many 18 to  
 8 34 adults to watch us. So we picked -- I  
 9 think colloquially it's referred to as the  
 10 demographic that the channels are most easily  
 11 delivered to their advertisers.

12 JUDGE SIPPEL: So give me the  
 13 demographics again please.

14 THE WITNESS: So in Tennis  
 15 Channel's case, I believe I would define our  
 16 core demographic as adults 35 to 64.

17 JUDGE SIPPEL: Thirty-five to 64.  
 18 Okay. And I -- But there's a mix of men and  
 19 women.

20 THE WITNESS: And it's a mix of  
 21 men and women.

22 JUDGE SIPPEL: Okay. Does that

1 help? Do you want to ask on top of that? I  
2 mean, do you want to bring -- Do you want to  
3 ask further questions on this subject?

4 MR. MOSS: I will, Your Honor, but  
5 I'd like to mark an exhibit first if that's  
6 okay with Your Honor.

7 JUDGE SIPPEL: You do it your way.  
8 Yes, sir.

9 MR. MOSS: Thank you.

10 MR. MOSS: May I approach, Your  
11 Honor?

12 JUDGE SIPPEL: Yes, you may.

13 MR. MOSS: This is an exhibit  
14 that's been marked Comcast 664.

15 JUDGE SIPPEL: Thank you.

16 MR. MOSS: I believe that it's  
17 already in.

18 MS. POGORILER: Your Honor, we  
19 object to this document which we believe is an  
20 excerpt without the rest of the document  
21 attached.

22 MR. MOSS: Your Honor, if you'd

1       like the rest of the document, we'd be happy  
2       to provide it.

3               JUDGE SIPPEL:  No.  Wait a minute.  
4       Let me -- Comcast Exhibit 664, it comes from  
5       a more complete document.

6               MR. MOSS:  Yes.

7               MR. SCHMIDT:  Yes, sir.

8               MR. MOSS:  Your Honor, this comes  
9       from the pitch that we've -- the proposal for  
10       increased distribution that Tennis Channel is  
11       here about, the pitch that Tennis Channel made  
12       in May of 2009 to Comcast, the one that  
13       Comcast rejected and they filed a lawsuit.  
14       This is a slide from that pitch and that pitch  
15       is included in the exhibit.

16              MR. SCHMIDT:  And we would just  
17       ask that the witness be shown it just for  
18       completeness and context.

19              MR. CARROLL:  Your Honor, we have  
20       no objection to that.  This is their document.  
21       They presented it to Mr. Bond.  We've taken  
22       one page out, but we have the rest of it and

1 we'll show that as well. But this is their  
2 page that they presented to us.

3 JUDGE SIPPEL: I'm going to allow  
4 it to be marked and received into evidence and  
5 with the understanding, of course, that this  
6 is part of a more complete document. And I  
7 don't -- Either way you want to proceed. You  
8 can show him the whole document and then ask  
9 him about this. That would probably be the  
10 best way to do it. We don't have to mark the  
11 whole document as an exhibit.

12 MR. CARROLL: We're trying to  
13 facilitate this and make this easy.

14 JUDGE SIPPEL: You're doing a very  
15 good job.

16 PARTICIPANT: -- the witness have.  
17 That's fine, Your Honor.

18 JUDGE SIPPEL: That's fine.  
19 Another thing if you insist of putting the  
20 whole thing in --

21 MR. CARROLL: And, Your Honor,  
22 this is already in evidence. But we're

1 showing it, just the exhibit.

2 JUDGE SIPPEL: Well, I saw it in  
3 your opening statement binder.

4 MR. CARROLL: Yes.

5 JUDGE SIPPEL: If it's in then we  
6 don't have to --

7 MR. MOSS: It's in the binders.  
8 Yes, Your Honor.

9 JUDGE SIPPEL: All right. Then  
10 let's not spend any more time with it.

11 MR. MOSS: Mr. Herman, you're  
12 aware --

13 MS. POGORILER: Eddie. Mr. Moss.

14 JUDGE SIPPEL: I ruled on the  
15 objection.

16 MS. POGORILER: Despite the  
17 admissibility though, I understood we were  
18 going to show the witness the whole thing.

19 JUDGE SIPPEL: Well, that was  
20 offered to me as a suggestion. If the witness  
21 wants the full document, he can have the full  
22 document.

1 THE WITNESS: I would like to see  
2 the full document.

3 JUDGE SIPPEL: There you go. It  
4 happens every time.

5 (Laughter.)

6 THE WITNESS: This is my first  
7 time.

8 JUDGE SIPPEL: You're consistent.

9 BY MR. MOSS:

10 Q Mr. Herman, I'm just going to ask  
11 you about this slide. This slide is in that  
12 pitch book. Isn't that, sir?

13 A Yes.

14 JUDGE SIPPEL: Let him describe  
15 what he's looking at. You call it a pitch  
16 book. What is that that you're looking at?  
17 It's multi-pages.

18 THE WITNESS: Yes. I have not  
19 seen this document before. I've seen -- Let  
20 me look at the whole thing please.

21 JUDGE SIPPEL: Take your time.

22 THE WITNESS: Okay. I've seen

1 slides from this presentation. I haven't seen  
2 this collection of slides for this purpose.  
3 But I recognize slides from the presentation.

4 JUDGE SIPPEL: That's all. Now  
5 Counsel referred to it as a pitch book. Does  
6 that mean anything? Does the term "pitch  
7 book" mean anything to you?

8 THE WITNESS: No.

9 JUDGE SIPPEL: Okay.

10 Mr. Moss, I think you're going to  
11 have to ask him a different question.

12 BY MR. MOSS:

13 Q Mr. Herman, you're aware Tennis  
14 Channel made a proposal to Comcast in 2009 for  
15 increased distribution. Right, sir?

16 A I'm vaguely aware because that's  
17 not my division.

18 Q Did anybody from Tennis Channel  
19 ask you to contribute any slides to the  
20 proposal that Tennis Channel made to Comcast  
21 in the year 2009?

22 A I don't have a specific

1 recollection of supplying slides. I have a  
2 recollection of a conversation about it. But  
3 I don't recall supplying slides. Someone in  
4 the Research Department might have supplied  
5 slides.

6 Q But this slide that describes  
7 Tennis Channel's core audience. That's  
8 included in the presentation. Correct, sir?

9 A Yes.

10 Q And this is how Tennis Channel  
11 described its core audience.

12 JUDGE SIPPEL: This is 664.

13 MR. MOSS: Yes.

14 JUDGE SIPPEL: He has the whole  
15 document in front of him. Six sixty-four is  
16 the one document you're being questioned  
17 about.

18 THE WITNESS: Can I? Thank you.  
19 My interpretation and this slides looks like  
20 it's repeated towards the end of the documents  
21 and you took it out of the center and put into  
22 the top. Or was this the first slide of the

1 document?

2 MR. MOSS: It was not the first  
3 slide. I gave you -- I'm sorry, Mr. Herman.  
4 I gave you a one page exhibit.

5 JUDGE SIPPEL: Wait a minute.  
6 Let's do this. Let's wait. We'll put them in  
7 order. Mr. Moss, help him put it in order.  
8 It's got to be in the same order that the  
9 packet appears in the origins.

10 THE WITNESS: Okay. So this is  
11 where it was.

12 MR. MOSS: Yes.

13 JUDGE SIPPEL: I know where you're  
14 going with the question and you can't be  
15 moving stuff around. Okay.

16 THE WITNESS: My interpretation of  
17 this slide --

18 JUDGE SIPPEL: And this being the  
19 664 exhibit.

20 THE WITNESS: Exhibit 664.

21 JUDGE SIPPEL: Thank you, sir.

22 THE WITNESS: This is the

1 introduction like a table of contents that is  
2 going to set up slides to talk about Tennis  
3 Channel's core audience. That's the way I  
4 would interpret it.

5 And then I would go to -- As I'm  
6 looking at this, this includes the slides that  
7 describe the audience. It starts with cable's  
8 most affluent audience which is usually what  
9 is a key part of our presentation. And it  
10 goes into income and then skews. So that's my  
11 interpretation of the flow of this document.

12 BY MR. MOSS:

13 Q So the introductory page to set up  
14 the discussion about Tennis Channel's  
15 demographics describes -- It says Tennis  
16 Channel's core audience and has a picture of  
17 a woman. Right, sir?

18 A It says, "Tennis Channel's Core  
19 Audience" and has a picture of a woman.

20 JUDGE SIPPEL: Are there any men  
21 in that package?

22 THE WITNESS: It starts with

1 Rafael Nadal.

2 JUDGE SIPPEL: I see. Okay.

3 BY MR. MOSS:

4 Q Mr. Herman, you testified already  
5 that Tennis Channel's primary competitive set  
6 is sports networks and you illustrate that  
7 competition with a series of charts that we  
8 looked at earlier. Right, sir?

9 A Correct.

10 Q And I believe you testified that  
11 it's obvious that Tennis Channel competes with  
12 other sports networks because of the  
13 advertising between Tennis Channel and those  
14 sports networks. Correct, sir?

15 A I think the comment about being  
16 obvious to me was that in my mind a channel's  
17 programming defines what its category is. And  
18 we are producing and airing tennis matches.  
19 So that makes us a tennis channel which is a  
20 sport. So that's my reference to maybe this  
21 seems obvious.

22 Our competitive set for

1 advertising are other sports channels. That's  
2 our primary competitive set.

3 Q And in order to illustrate that  
4 that was primary and competitive set in  
5 addition to the fact that they are all sports  
6 networks, in order to illustrate that you  
7 compete with them, you prepared a chart which  
8 shows the advertisement alike with them.  
9 Correct, sir?

10 A Correct.

11 Q And it's your testimony that  
12 because there's advertising overlap that  
13 demonstrates competition. Right, sir?

14 A Correct.

15 Q Now, Mr. Herman, that chart was  
16 Exhibit C to your testimony. Is that right,  
17 sir? I'd like to look back at Tab C.

18 JUDGE SIPPEL: Is that Tab C?

19 MR. MOSS: Exhibit C, Your Honor.

20 JUDGE SIPPEL: Exhibit C or Tab C  
21 please?

22 MR. MOSS: I'm not sure. I

1 believe it's Tab C to Mr. Herman's direct  
2 testimony. It's a chart.

3 JUDGE SIPPEL: Right. Tab C to  
4 Tennis Channel Exhibit 15.

5 MR. MOSS: Yes, Your Honor.  
6 That's correct.

7 JUDGE SIPPEL: Okay. Let's do it.

8 BY MR. MOSS:

9 Q And, Mr. Herman, just so we're  
10 clear, these are Tennis Channel's top 30  
11 advertising accounts on the left-hand side.  
12 Correct?

13 A From 2010, correct.

14 Q From 2010. And the total column,  
15 the first column, has how much money these  
16 advertisers have spent in aggregate. Right?

17 A Correct.

18 Q Across all networks. Or across  
19 all sports networks.

20 A Correct. In thousands.

21 Q And it's across all networks, not  
22 just sports networks. Right?

1           A       Correct.

2           Q       And the first column is Tennis  
3       Channel and that column illustrates how much  
4       money in thousands in 2010 each of these top  
5       30 spent on Tennis Channel.

6           A       Yes.

7           Q       And then you have ESPN and then  
8       you have ESPN2 and then you have Fox Soccer  
9       Channel, then Golf, then MLB, the baseball  
10      channel, NBA, the basketball channel, NFL, the  
11      football channel, and Versus. Correct, sir?

12          A       Correct.

13          Q       And at the bottom you analyze how  
14      many of these advertising accounts also  
15      advertise across these various sports  
16      networks. Right, sir?

17          A       Yes.

18          Q       So, for example, 23, all but  
19      seven, advertise on the Golf Channel. Right,  
20      sir?

21          A       Yes.

22          Q       And that illustrates the